BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION

IN RE:

C. L. C.

v. NO. 03-45

Department of Children's Services

FINAL ORDER

This cause came to be heard on the 13th day of October, 2003, before the Honorable Linda G. Welch, Administrative Law Judge for the Department of Education, pursuant to Respondent's Motion to Dismiss and Motion for Summary Judgment, Petitioner's Motion for Summary Judgment, discussion via conference call with Theresa-Vay Smith, counsel for the Petitioner and Ann Barker, counsel for the Respondent, and the entire record.

ISSUES

(1) Was C.L.C. denied a free and appropriate public education (FAPE), in violation of the Individual with Disabilities Education Act (IDEA) and Section 504 when the Tennessee Department of Children's Services (DCS) used his Social Security benefits to offset state monies used for services provided when C.L.C. was in their temporary legal custody and care?

(2) Is this claim barred by the statute of limitations?

SUMMARY OF PROCEEDINGS

On May 4, 2000, the DCS Director of Fiscal Services sent C.L.C. a statement of accounts dated May 1, 2000. (Vol. II of the Appendix to Petitioner's Memorandum in Support of Motion for Summary Judgment, Appendix 27). DCS's statement of accounts showed that DCS used C.L.C.'s Social Security benefits to offset the cost of his residential care including education and related services (*Id.*) On February 9, 2001, C.L.C. filed a complaint in the United States District Court for the Middle District of Tennessee in Nashville. George Hattaway, in his official capacity as DCS Commissioner, was a named defendant in the lawsuit. In the complaint, C.L.C. alleged deprivation of a free appropriate public education (FAPE). He alleged that some part of his Social Security benefits was used to reimburse the state of Tennessee for the cost of his special education and related services. DCS filed a Motion to Dismiss C.L.C.'s complaint on the grounds of sovereign and qualified immunity. DCS also filed a motion to stay all discovery. The District Court granted DCS's motion to stay all discovery. On May 17, 2001, United States District Court Judge Todd Campbell issued a Memorandum Opinion denying DCS's motion to dismiss. (Attachment A to Respondent Department of Children's Services Motion to Dismiss) Judge Campbell also found that C.L.C. did not need to exhaust his administrative remedies under the IDEA and that he had properly filed a complaint in Federal Court for violation of the IDEA and Section 504. (*Id.*, pp. 7-8) On May 25, 2001, DCS appealed the denial of its motion to dismiss.[1]

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[1] DCS filed an interlocutory appeal challenging the district court's denial of its motion to dismiss on the grounds of sovereign and qualified immunity. DCS did not appeal the district court's finding that C.L.C. was not required to exhaust his administrative remedies before he filed in Federal Court. Gean v. Hattaway, 330 F.3d 758 (6th Cir. 2003).

On June 6, 2003, the Sixth Circuit Court of Appeals issued an opinion[2], and on July 7, 2003, the Sixth Circuit issued a mandate. The Sixth Circuit dismissed C.L.C.'s IDEA claim because he did not exhaust his administrative remedies before filing in Federal Court. (*Id.*) On August 21, 2003, C.L.C. filed a request for a due process hearing.

The Respondent filed a Motion to Dismiss with Supporting Memorandum of Law, a Motion for Summary Judgment, and a Renewal of its Motion to Dismiss. The Petitioner filed a Motion for Summary Judgment, Memorandum in Support of Petitioner's Motion for Summary Judgment, an Appendix (Vol. I & II) to Petitioner's Motion for Summary Judgment, a Response to Respondent's Motion to Dismiss, a Prehearing Memorandum, and Witness and Exhibit lists.

FACTUAL HISTORY

The Petitioner, whose date of birth is February 12, 1982, was evaluated in 1995 by the Hamilton County Department of Education and determined to meet the criteria of Attention Deficit Hyperactive Disorder (ADHD) (Vol. I of the Appendix to Petitioner's Memorandum in Support of Motion for Summary Judgment, #9) (hereinafter referred to as Petitioner's Appendix) for which he was prescribed Ritalin. The last time the child attended public school was in 1996 when he was in the 7th grade (Petitioner's Appendix, #13, p. 3).

Petitioner was determined to be IDEA eligible on August 28, 1998, as he met the criteria of Health Impaired because of the diagnosis of ADHD (*Id.*) At this point he was enrolled in Lakeside Academy where an IEP was done on the same date he was determined

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[2] *Gean v. Hattaway*, 330 F.3d 758 (6th Cir. 2003).

to be eligible (Petitioner's Appendix, #10). The IEP does not state that there was a need for related services which included room, board and counseling. The only item noted under related services was "[c]onsultation for all classes, two sessions per month, thirty minutes per session: with the person or agency responsible listed as Lakeside Academy. (*Id.*) Nothing was listed under Direct Special Education or other services.

The Petitioner was committed to the custody of DCS on January 13, 1997, by the Hamilton County Juvenile Court because he was found to be delinquent and in need of treatment and rehabilitation (Petitioner's Appendix, #12 & #13). He was committed for three counts of rape of a child, one count of attempted rape and aggravated battery (Declaration of Veronica Holt). The court ordered a psycho-sexual assessment, an Inpatient Sexual Perpetrator Program, and a psychological exam. The Petitioner was subsequently taken into state custody and was temporarily placed by DCS at two detention centers and then at Woodland Hills Youth Development Center. (Petitioner's Appendix, #20). On January 24, 1997, Petitioner was placed at Mountain View Youth Development Center (Petitioner's Appendix, #13). On February 6, 1997, the Mountain View placement team met "to determine Petitioner's needs, review services available and make placement recommendations." The placement recommendations were that Petitioner be placed in a "Sexual Offender Program or Other DCS Facility." (Petitioner's Appendix, #13). At this time Mountain View did not have its own sexual offender program. (Declaration of Veronica Holt). On March 25, 1997, he was placed at Reflections Treatment Agency (Reflections) where he remained for three years (Petitioner's Appendix, #14 & #15). An individual treatment plan was instituted on March 25, 1997 and an M-Team meeting was subsequently held at Reflections on August 28, 1998.

C.L.C. (Petitioner) reached the age of majority on February 12, 2000 (date of birth: February 12, 1982). It is undisputed that he requested, through his counsel, an accounting of his Social Security benefits from the DCS Director of Fiscal Services and that on May 4, 2000, DCS provided the accounting to Petitioner's counsel. He subsequently filed suit in Federal Court in February 2001, wherein one of the issues was a violation of the IDEA (Individual with Disabilities Education Act, 20 U.S.C. § 1401 *et seq.*) caused by a denial of FAPE. The specific issue concerning denial of FAPE was that the Petitioner did not receive a free education because DCS used Petitioner's Social Security benefits to reimburse the State for the cost of his special and regular education and related services. All services being provided to the child during the time in question occurred during the placement arranged as a result of the child being deemed delinquent. There has been no issue raised about the appropriateness of the placement.

CONCLUSIONS OF LAW

The Petitioner's claims are barred by the applicable statute of limitations. IDEA contains no specific statute of limitations; however, the issue was addressed and decided on February 20, 2003, by the United States District Court for the Middle District of Tennessee in a Memorandum Opinion in *Chadwick Allen Love v. Page B. Walley* (Civil Action No. 3:02-1004). Judge Campbell stated that the Court must look to the State statute of limitations that is most applicable to the case at bar and is consistent with underlying federal policies, citing *Cory D. Burke County School District*, 285 F. 3rd 1294, 1297 (11th Cir. 2002); *Janzen v. Knox County Board of Education*, 790 F. 2d 484, 486 (6th Cir. 1986). Judge Campbell further stated that selection of a statute of limitations period must occur on a case

by case basis, and "the individual case must be characterized by considering the facts, the circumstances, the posture of the case and the legal theories presented." (Memorandum Opinion at 4, citing *Janzen* at 487).

The Petitioner states that a three year statute of limitations is most appropriate for an action brought for the reimbursement of costs paid for services required to be provided at no cost under IDEA. *(Id.)*, (Petitioner's Response to Motion to Dismiss by Respondent Department of Children's Services, p. 3). The Court in *Love* found that the date in which the claim accrues is when "the Plaintiff learns of the injury, whether or not he knows the injury is actionable." (Memorandum Opinion at 4, citing *James v. Upper Arlington City School District*, 987 F. Supp. 1017, 1023 (S.D. Ohio 1997, citing *Hall v. Knott County Board of Education*, 941 F. 2d 402, 408 (6th Cir. 1991)).

In the case at hand, the Petitioner learned about the use of his Social Security benefits on May 4, 2000, when he, through counsel, received an accounting of said benefits. (Petitioner's Response to Motion to Dismiss by Respondent, p.1). There is some discrepancy in Petitioner's Response to Respondent's Motion to Dismiss as to whether Petitioner learned of the accounting on May 4, or May 9; however, the five (5) day period would have made no difference in this ruling. On February 9, 2001, C.L.C. filed a complaint in the United States District Court for the Middle District of Tennessee in Nashville, raising the issue of a denial of FAPE resulting in a violation of IDEA. The Petitioner had not requested a due process hearing to address this issue nor was one requested until approximately 3-1/2 years later. The issue of a due process hearing was raised only after the Sixth Circuit dismissed C.L.C.'s IDEA claim because he had not exhausted his administrative remedies before filing in Federal Court.

The statute of limitations in Tennessee for reimbursement of costs paid for services is three years. (See *Janzen* at 489). The Petitioner did not raise the issue of a more extensive time frame than three years for the statute of limitations under any other legal theory. In fact, the Petitioner agreed that a three year statute of limitations in this case was appropriate. (Petitioner's Response to Respondent's Motion to Dismiss, p.3). Therefore, based on the facts and procedural history of the case as well as the record as a whole, it is

ORDERED, ADJUDGED AND DECREED THAT:

1. The Petitioner's claims concerning IDEA and Section 504 are barred by the statute of limitations.

2. "Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee or may seek review in the United States District Court for the District in which the School System is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order in non-reimbursement cases or three (3) years in cases involving education costs and expenses. In appropriate cases, the reviewing Court may order that this Final Order be stayed pending further hearing in the cause.

If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of section 49-10-601 of the Tennessee Code Annotated. Within sixty (60) days from the date of this order (or thirty (30) days if the Board of Education chooses not to appeal), the local education agency shall render in writing to the District Team Leader and the Office of Compliance, Division of Special Education, a statement of compliance with the provisions of this order."

ENTERED this the 21 day of November, 2003.

Linda G. Welch
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that I. Linda G. Welch, the undersigned, served a true and exact copy of this legal pleading to, Theresa Vay-Smith. attorney for the child. at Legal Aid Society of Middle Tennessee and the Cumberlands, Oak Ridge, Tennessee 37831 and Ann Barker. attorney for the Department of Children's Services. at 308 Home Avenue, Maryville, Tennessee 37801, by deposit in the United States mail, postage prepaid and correct address thereon to carry the same to its destination.

This is the 21 day of November, 2003.

Linda G. Welch
Administrative Law Judge